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11 PRICELINE.COM

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT – SANTA ANA

14 KEVIN MODA aka HOUMAN  
15 MOGHADDAM, an individual;  
16 MAHMOUD DAVARI, on behalf of  
17 himself and others similarly situated  
18 class members.

19 Plaintiff,

20 v.

21 PRICELINE.COM INCORPORATED,  
22 a Delaware domestic corporation, and  
23 DOES 1 through 10, inclusive,

24 Defendants.

CASE NO.SA CV 06-0474 DOC (RNBx)

The Honorable David O. Carter

**PROTECTIVE ORDER  
PURSUANT TO F.R.C.P.  
RULE 26(C)**

Action Filed: 5/12/06  
Second Am. Complaint Filed: 11/16/07  
Trial Date: 11/3/08

25 The following protective order is to be entered in this matter, pursuant to the  
26 provisions of *Federal Rules of Civil Procedure* Rule 26(c)<sup>1</sup>:

27 1. The procedures outlined in this Protective Order shall apply to all documents,  
28 things and information subject to discovery or disclosed pursuant to the *Federal  
Rules of Civil Procedure* or offered in any court filings or at court hearings or trial,  
including without limitation, written discovery responses, documents and tangible

<sup>1</sup> All references to “Rules” are to the *Federal Rules of Civil Procedure*, except where context indicates otherwise.

1 things produced, expert reports, or transcripts of any testimony adduced at deposition  
2 upon oral examination or at court hearings (including any trials).

3 2. For purposes of this Order, the following definitions shall apply:

4 (a) As used herein "**DOCUMENT**" shall mean any "writing" as defined in  
5 Rule 1001 of the *Federal Rules of Evidence*, including without limitation any  
6 records, exhibits, reports, samples, transcripts, video or audio recordings, affidavits  
7 or declarations, briefs and motion papers, summaries, notes, abstracts, drawings,  
8 company records and reports, written discovery responses, or databases, whether  
9 tangible or stored as computer records;

10 (b) As used herein, "**DESIGNATING PARTY**" shall mean a party that  
11 seeks to designate a particular **DOCUMENT** in accordance with the designation set  
12 forth in Section 3.

13 (c) As used herein, "**REQUESTING PARTY**" shall mean a party that  
14 seeks production of a particular **DOCUMENT**.

15 (d) The phrase "**DESIGNATED MATERIAL**" shall mean any Discovery  
16 Material designated by the Producing Party as "CONFIDENTIAL MATERIAL" or  
17 "HIGHLY CONFIDENTIAL," and a party shall make such a designation only for  
18 Discovery Material which that party in good faith believes contains trade secret or  
19 other confidential, competitive or proprietary business information used by it in, or  
20 pertaining to, its business which the party takes appropriate efforts to keep  
21 confidential or which the party is otherwise required to keep confidential by  
22 agreement or law.

### 23 3. ACCESS TO DESIGNATED MATERIAL

#### 24 3.1 MATERIALS DESIGNATED "CONFIDENTIAL"

25 Subject to the limitations set forth in this Protective Order, Designated  
26 Material may be marked "CONFIDENTIAL" for the purposes of avoiding invasions  
27 of individual privacy or of protecting proprietary information, and confidential  
28

1 business and/or non-public financial information relating to the Designating Party's  
 2 business, personal, or financial affairs. Materials designated "CONFIDENTIAL" may  
 3 be disclosed to:

4 (a) Persons who appear on the face of Designated Materials marked  
 5 "CONFIDENTIAL" as an author, addressee or recipient thereof;

6 (b) Counsel of record for the parties to this action, as well as the  
 7 partners, associates, agents and employees of such counsel to the extent reasonably  
 8 necessary to render professional services in this action;

9 (c) The parties to this action;

10 (d) Subject to Section 4 below, Designated Material marked  
 11 "CONFIDENTIAL" may also be disclosed to non-party consultants retained by  
 12 outside counsel of record and to retained experts (collectively, "Consultants"); and

13 (e) Subject to Section 7.3 below, Designated Material marked  
 14 "CONFIDENTIAL" may be shown to witnesses at deposition and/or at trial.

### 15 3.2 MATERIALS DESIGNATED "HIGHLY CONFIDENTIAL"

16 Subject to the limitations set forth in this Protective Order, Designated  
 17 Material may be marked "HIGHLY CONFIDENTIAL" for the purposes of (i)  
 18 avoiding invasions of individual privacy or (ii) protecting non-public information  
 19 relating to the Designating Party's business, personal, or financial affairs that derives  
 20 actual or potential independent value from not being generally known to the public or  
 21 to persons who can obtain value from its disclosure. Materials designated "HIGHLY  
 22 CONFIDENTIAL" may be disclosed to:

23 (a) Persons who appear on the face of the Designated Material  
 24 marked HIGHLY CONFIDENTIAL as an author, addressee or recipient thereof;

25 (b) Outside counsel of record for the parties to this action, as well as  
 26 the partners, associates, agents and employees of such counsel to the extent  
 27 reasonably necessary to render professional services in this action;  
 28

1 (c) Subject to Section 4 below, Designated Material marked  
 2 "HIGHLY CONFIDENTIAL" may also be disclosed to Consultants; and

3 (d) Subject to Section 7.3 below, Designated Material marked  
 4 "HIGHLY CONFIDENTIAL" may be shown to witnesses at deposition and/or at  
 5 trial.

6 3.3. Upon the termination of this action, all recipients of Designated Material  
 7 pursuant to Section 3 shall return all Designated Material (and all copies thereof) to  
 8 outside counsel of record for disposal by outside counsel in the manner described in  
 9 Section 13.2 of this Protective Order.

#### 10 4. CERTIFICATES CONCERNING DESIGNATED MATERIALS

11 4.1 Each person to whom any Designated Material may be disclosed  
 12 pursuant to the provisions of Sections 3.1(c) and (d) and 3.2(c), above, shall, prior to  
 13 the time such Designated Material is disclosed to him or her, be provided with a copy  
 14 of this Protective Order and shall certify under penalty of perjury that he or she has  
 15 carefully read the Protective Order and fully understands its terms. This certificate  
 16 shall be in the form attached as Exhibit A. Counsel who makes any disclosure of  
 17 Designated Materials pursuant to Sections 3.1(c) and (d) and 3.2(c), above, shall  
 18 retain each original executed certificate and, upon written request, shall circulate  
 19 copies to all counsel of record at the termination of this action.

20 4.2 A Designating Party, at its option, may provide access to its  
 21 CONFIDENTIAL and HIGHLY CONFIDENTIAL material to a Consultant without  
 22 obtaining a Certification of Consultant. However, before a Non-Designating Party  
 23 who has received material that is designated as HIGHLY CONFIDENTIAL may  
 24 provide access to such material to its Consultant under Section 3.2(c), the Non-  
 25 Designating Party desiring to provide the material produced by a Designating Party  
 26 must obtain from the Consultant an executed Consultant Certification in the form  
 27 attached hereto as Exhibit B. The party seeking to disclose such information from a  
 28 Designating Party shall maintain the original signed Certification of Consultant as

1 provided in Section 4.1 and serve a copy of the Certification of Consultant, which  
2 may or may not include the identity of the Consultant, but will always include the  
3 identity of the company or firm that employs the Consultant, on counsel for the  
4 Designating Party. Upon the Designating Party's counsel's receipt of the copy of the  
5 Certification of Consultant from the non-Designating Party's counsel, the  
6 Designating Party's counsel shall notify the party seeking to make disclosure of such  
7 material of any objection to such Consultant within ten calendar days after its  
8 submission of the copy of Certification. The party seeking to disclose HIGHLY  
9 CONFIDENTIAL material provided by the Designating Party shall delay  
10 conveyance to its Consultant for this ten calendar day period to give the counsel for  
11 the Designating Party an opportunity to object. In the absence of receiving such an  
12 objection, such Consultant shall thereafter be deemed qualified to receive the  
13 Designating Party's material. The Non-Designating Party shall have the right to  
14 challenge the Designating Party's objection, and to have such objection overturned by  
15 filing a suitable motion with the court. No party shall use its right to object to a  
16 proposed independent Consultant in order to interfere with the ability of any party to  
17 reasonably prepare for trial nor to obtain the identity of any proposed independent  
18 Consultant.

19 **5. USE OF DESIGNATED MATERIALS BY DESIGNATING PARTY**

20 Nothing in this Protective Order shall limit any Designating Party's use of its  
21 own documents and information, nor shall it prevent the Designating Party from  
22 disclosing its own confidential information or documents to any person. Such  
23 disclosure shall not affect any designations made pursuant to the terms of this  
24 Protective Order, so long as the  
25 disclosure is made in a manner which is reasonably calculated to maintain the  
26 confidentiality of the information.

27 **6. DESIGNATING MATERIALS**

28

1           6.1 Documents, materials and discovery responses, in whole or in part, may  
2 be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as follows:

3           6.2 The producing or responding party shall designate materials by placing  
4 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on each page of the  
5 materials prior to production.

6           6.3 When a party wishes to designate as "CONFIDENTIAL" or "HIGHLY  
7 CONFIDENTIAL" materials produced by someone other than the Designating Party,  
8 such designation shall be made:

9                   (a) Within twenty-five days (25) from the date that the Designating  
10 Party receives copies of the materials from the producing or disclosing entity; and

11                   (b) By notice to all parties to this action and to the Producing Party, if  
12 such party is not a party to this action, identifying the materials to be designated with  
13 particularity (either by production numbers or by providing other adequate  
14 identification of the specific material). Such notice shall be sent by facsimile or  
15 electronic mail and by regular mail.

16           6.4 Upon notice of designation pursuant to Section 6.2 above, all persons  
17 receiving notice of the requested designation of materials shall:

18                   (a) Make no further disclosure of such Designated Material or  
19 contained therein, except as allowed in this Protective Order;

20                   (b) Take reasonable steps to notify any persons known to have of or access  
21 to such Designated Materials of the effect of such under this Protective Order; and

22                   (c) Take reasonable steps to reclaim or prevent access to such  
23 Material or information in the possession or control of any person not Designated  
24 information possession designation permitted to have access under the terms of this  
25 Protective Order.

26           6.5 All materials designated as "HIGHLY CONFIDENTIAL" shall be  
27 produced on non-reproducible paper, to be paid for by the non-designating party.

28   7.   DESIGNATING DEPOSITIONS

1           7.1 Deposition transcripts or portions thereof may be designated as  
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by a party during deposition  
3 testimony taken in this action, in which case the portion of the transcript containing  
4 Designated Material shall be identified in the transcript by the Court Reporter as  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The designated testimony  
6 shall be bound in a separate volume and marked by the reporter accordingly.

7           7.2 Where testimony is designated at a deposition, the Designating Party  
8 shall have the right to exclude at those portions of the deposition all persons not  
9 authorized by the terms of this Protective Order to receive such Designated Material.

10           7.3 Notwithstanding the provisions set forth in Sections 3.1, 3.2 and 4,  
11 above, any party may mark Designated Material marked "CONFIDENTIAL" or  
12 "HIGHLY CONFIDENTIAL" as a deposition exhibit and examine any witness  
13 thereon, provided that the exhibit and related transcript pages receive the same  
14 confidentiality designation as the original Designated Material. Any person who is  
15 shown a deposition exhibit comprised of Designated Material marked "HIGHLY  
16 CONFIDENTIAL" under this section, but who is not otherwise entitled to access to  
17 such material under Section 3.2 and/or Section 4, above, shall not be allowed (except  
18 by express permission of the Designating Party) to keep a copy of the deposition  
19 exhibit, and shall not be furnished a copy of such deposition exhibit when given the  
20 opportunity to review the deposition transcript for accuracy following the deposition.

21           7.4 Any party may, within twenty (20) days after receiving a deposition  
22 transcript, designate pages of the transcript and/or its exhibits as Designated Material.  
23 If any party so designates such material, the parties or deponents shall provide  
24 written notice of such designation to all parties within the twenty-day (20) period.  
25 Designated Material within the deposition transcript or the exhibits thereto may be  
26 identified in writing or by marking the identified portions as "CONFIDENTIAL" or  
27 "HIGHLY CONFIDENTIAL." Until the expiration of the twenty day (20) period,  
28 any portion of the deposition not previously designated shall be treated as "HIGHLY



CONFIDENTIAL" and subject to protection as provided by this Protective Order. After the expiration of the twenty (20) day period, if no party or deponent has timely designated any additional material, then such undesignated transcript and/or exhibits may be disclosed without restriction.

#### 8. COPIES

All complete or partial copies of Designated Materials shall also be deemed subject to the terms of this Protective Order.

#### 9. COURT PROCEDURES

9.1 Disclosure of Designated Material to Court Officials. Subject to the provisions of this Section 9, Designated Material may be disclosed to the Court, Court officials or employees involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master or referee appointed by the Court) and the jury in this action, and any interpreters interpreting on behalf of any party or deponent.

##### 9.2 OBLIGATIONS OF THE COURT

The parties agree that the employees of the Court or the Clerk's office have no duty to the parties to maintain the confidentiality of any information in any papers filed with the Court.

9.3 If a party files Designated Material, it shall be filed under seal in compliance with the procedures set forth in Local Rule 79-5 and shall bear an appropriate legend stating that the information is subject to Protective Order and shall not be opened except as directed by the Court.

##### 9.4 RETRIEVAL OF DESIGNATED MATERIALS

The party responsible for lodging or filing the Designated Materials shall be responsible for retrieving such Designated Materials from the Court following the final termination of the action (including any appeals thereof).

#### 10. OBJECTIONS



1           10.1 A party may challenge the propriety of any designation under this  
2 Protective Order at any time. A challenge may be made by serving on all other  
3 parties a captioned notice of objection, which shall identify with particularity the  
4 Designated Materials as to which the designation is challenged and state the basis for  
5 each challenge ("Notice of Objection"). Service of a Notice of Objection shall be  
6 made by facsimile and by mail.

7           10.2 In the event that the Designating Party does not change its designation  
8 within 15 calendar days of the date of service of a Notice of Objection, the Non-  
9 Designating Party may move the Court for a reclassification of the material. In the  
10 event of such a motion, the material at issue may be submitted to the Court for in  
11 camera inspection. The moving party shall have the burden of establishing that the  
12 designation is improper and should be changed.

13           10.3 The parties shall meet and confer in good faith prior to the filing of any  
14 motion under this Section 10.

15       11. CLIENT COMMUNICATION

16           Nothing in this Protective Order shall prevent or otherwise restrict counsel  
17 from rendering advice to their clients and, in the course of rendering such advice,  
18 relying upon the examination of Designated Material. In rendering such advice and  
19 otherwise communicating with the client, however, counsel shall not make specific  
20 disclosure of any Designated Material, except as permitted by this Protective Order.

21       12. NO PREJUDICE

22           This Protective Order shall not diminish any existing obligation or right with  
23 respect to Designated Material, nor shall it prevent a disclosure to which the  
24 Designating Party consents in writing before the disclosure takes place.

25           12.1 Unless all parties stipulate otherwise, evidence of the existence or  
26 nonexistence of a designation under this Protective Order shall not be admissible for  
27 any purpose during any proceeding on the merits of this action.  
28

1           12.2 If any person required to produce documents inadvertently produces any  
2 Designated Material without marking it with the appropriate legend, the producing  
3 party may give written notice to the receiving party or parties, including  
4 appropriately stamped copies of the Designated Material, that the document, thing, or  
5 response is deemed Designated Material and should be treated as such in accordance  
6 with the provisions of this Protective Order.

7           12.3 Neither the provisions of this Protective Order, nor the filing of any  
8 material under seal, shall prevent the use in open court, at any hearing, or at trial of  
9 this case of any material that is subject to this Protective Order or filed under seal  
10 pursuant to its provisions. Prior to trial, the parties shall meet and confer after the  
11 pretrial conference concerning appropriate methods for dealing with Designated  
12 Material at trial.

13       13. MODIFICATION AND SURVIVAL

14           13.1 MODIFICATION

15           All parties reserve the right to seek modification of this Protective Order at any  
16 time for good cause. The parties agree to meet and confer prior to seeking to modify  
17 this protective order for any reason. The restrictions imposed by this Protective Order  
18 may only be modified or terminated by written stipulation of all parties and/or by  
19 order of this Court.

20           13.2 SURVIVAL AND RETURN OF DESIGNATED MATERIAL

21           This Protective Order shall survive termination of this action. Upon final  
22 termination of the action, including appeals and retrials, and at the written request of  
23 the Designating Party, all Designated Material, including deposition testimony  
24 regarding designated exhibits and all copies thereof, shall be returned to counsel for  
25 the Designating Party or, if such party is not represented by counsel, directly to the  
26 Designating Party. Such Designated Materials shall either be returned at the expense  
27 of the Designating Party or, at the option and expense of the requesting party,  
28 destroyed. Upon request for the return or destruction of Designated Materials,

1 counsel of record shall certify their compliance with this provision and shall deliver  
2 such certification to counsel for the Designating Party not more than 90 days after the  
3 written request to return or destroy Designated Materials.

4 13.3 Notwithstanding the provisions for return or destruction of Designated  
5 Material, outside counsel may retain pleadings, attorney and consultant work  
6 product, deposition transcripts and exhibits containing Designated Material, as well  
7 as one copy of each item of Designated Material for archival purposes.

8 14. COURT'S RETENTION OF JURISDICTION

9 The Court retains jurisdiction to make such amendments, modifications, and  
10 additions to this Protective Order as it may from time to time deem appropriate.

11 **IT IS HEREBY ORDERED.**

12 The foregoing Order is APPROVED BY THE COURT.

13  
14 DATED: March 27, 2008

U.S. DISTRICT COURT JUDGE

15  
16 By: David O. Carter  
17 The Honorable David O. Carter  
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**EXHIBIT A****CERTIFICATION CONCERNING MATERIAL  
COVERED BY PROTECTIVE ORDER**

I, the undersigned, hereby certify that I have read the attached Protective Order entered in *Kevin Moda aka Housman Moghaddam, an individual; Mahmoud Davari, on behalf of himself and others similarly situated class members v. Priceline.com, Inc.* I understand the terms of this Protective Order. I agree to be bound by such terms and to submit to the personal jurisdiction of the United States District Court, Central District, Santa Ana, California with respect to any proceeding related to the enforcement of this Protective Order, including any proceedings related to contempt of Court. I will not disclose Designated Materials marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to anyone other than persons specially authorized by the Order and agree to return all such material which come into my possession to counsel from whom I received such materials.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
 Name of Individual:  
 Company or Firm:  
 Address:  
 Telephone Number:  
 Relationship to this action and its parties:

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature

**EXHIBIT B****CONSULTANT CERTIFICATION**

I, the undersigned, hereby certify that I have read the attached Protective Order entered in *Kevin Moda aka Houman Moghaddam, an individual; Mahmoud Davari, on behalf of himself and others similarly situated class members v. Priceline.com, Inc.* I understand the terms of this Protective Order. I agree to be bound by such terms and to submit to the personal jurisdiction of the United States District Court, Central District, Santa Ana, California, with respect to any proceeding related to the enforcement of this Protective Order, including any proceedings related to contempt of Court. I will not disclose Designated Materials marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to anyone other than persons specially authorized by the Order and agree to return all such material which come into my possession to counsel from whom I received such materials.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
 Name of Individual:  
 Company or Firm:  
 Address:  
 Telephone Number:  
 Relationship to this action and its parties:

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature